

CRITIQUE:

The State Services Commission has produced a booklet entitled "Industrial Contracts of Service in the Health Service." This is a useful and clearly written resume of all you ever wanted to know about the structures of and the negotiating processes involved in individual contracts of employment between employer and employee. However although the booklet is subtitled "An introductory guide for employees" it has to be recognised that it is the production of an organisation representing your employers and a critical eye can discern that it is subtly slanted to represent employer interests.

First it must be stressed that all salaried doctors are still covered by the current Award. An award has almost the same status as a piece of legislation and cannot be breached even by mutual agreement. It is what is called a minimum rates document and that means that no employee covered by its terms and conditions can receive anything less than those terms and conditions as set down. However there is nothing to prevent a contract being drawn up which will give the employee greater benefits.

TENURE:

In the booklet the possibility of having a contract for a set period of time is canvassed. A fixed term contract is perfectly legal even where the employee is covered by an existing award. However the employee must be aware if he or she accepts a contract with a finite date then the previous 'open-ended' contract is considered terminated by mutual agreement. The award will still apply but once the new contract has elapsed on the due date the employee will have no claim to either continuing in that position or to seek compensation based on years worked under the original contract of employment. There cannot legally be a redundancy situation when the employment is terminated on a mutually agreed date. Note also that because the fixed term

contract is to be a new one any benefits accrued under the original contract because of length of service are not automatically carried over to the new contract. Some of these types of benefits may need to be part of the negotiations.

ALLOWANCES:

As the booklet specifies the allowances granted by the award continue to apply. However it does not make clear that in order to compensate for the disadvantages of a fixed term contract an employee can seek other privileges over and above those in the award. The same applies to leave entitlements and salary rates. Presumably it must be in the interests of the employer to place you under a new contract. (Our interests too should be safe-guarded. However remember that at the moment you cannot be required to change your contract to one for a fixed term if you see no advantage in it.

EXEMPTIONS FROM THE AWARD.

Presently the award covers all senior salaried doctors employed by Hospital or Area Health Boards. At some later date it is possible that as a result of negotiation, or by order of the Arbitration Commission, or through legislative Commission, or through legislation, some of these doctors will be exempted from the coverage of the award. In that case it will be (essential to negotiate individual contracts of service. The booklet makes the policy statement that the award document will apply until new terms and conditions are negotiated. It does not explain what could happen if new terms and conditions are not agreed to. If the exempted doctor finds the new contract unacceptable it would appear that the old contract can be terminated on due notice. The terms of the award are not enforceable except under common law and even if a personal grievance were to be taken on the grounds of unjustified dismissal it could well be shown that the old contract was no longer viable on the grounds of effective management. The employee would

be in much the weaker negotiating position in this type of situation as new contracts could be offered on a "take it or leave it basis."

CONCLUSION:

The negotiation of any contract is not a simple business. Every care should be taken to see that all aspects have been covered. Never assume anything. Above all seek advice from your union.

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